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## UN Forces and International Humanitarian Law

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**A**T LONG LAST, the United Nations has promulgated a set of principles and rules concerning the applicability of International Humanitarian Law (IHL) to military forces under its command and control.<sup>1</sup>

From the time that the first United Nations force was put into the field—that is, into the Sinai<sup>2</sup>—and especially the first one that was required to engage in active military operations—in the Congo<sup>3</sup>—the question has been raised to what extent are or should such operations be subjected to IHL. This question became more urgent as the number and extent of UN military operations suddenly increased in the 1990s—following the uniquely successful operation in Namibia.<sup>4</sup> As described below, the answer to what would seem to be a relatively simple question with an obvious answer (they should be!) has not been easy to arrive at. The present study is not intended as a contribution to the academic debate,<sup>5</sup> but rather catalogues the practical arrangements that have been made, or neglected, in this regard. Meanwhile, other essentially negative developments such as the increasingly frequent assaults on UN forces and the brutality of many recent conflicts, have raised some related problems. The protection of UN forces, their responsibilities when faced with major violations of IHL, and their interaction with the international criminal tribunals established in the past several years will also be discussed briefly herein.

The opinions shared in this paper are those of the author and do not necessarily reflect the views and opinions of the U.S. Naval War College, the Dept. of the Navy, or Dept. of Defense.

## Background

Blue Helmet<sup>6</sup> operations come in many different shapes, sizes, and complexities, and in particular have various and sometimes varying or evolving mandates. Although a few have been established by the UN General Assembly,<sup>7</sup> the great bulk were created by the Security Council. In doing so, the Council acted under two different sources of authority located somewhere in the UN Charter. The larger number, the so-called peace-keeping operations, are authorized under what Secretary-General Hammarskjöld characterized as Chapter VI½, thus indicating that there was no specific Charter authority that could be cited.<sup>8</sup> The remaining operations are authorized, or sometimes continued,<sup>9</sup> under Chapter VII, which in its Article 42 does foresee the Council deploying air, sea or land forces.<sup>10</sup>

There are yet other types of UN-authorized deployments of military forces, which are sometimes confused with the Blue Helmet operations mentioned above. The exemplars of the first of these types are the coalition forces that fought the Korean War in the 1950's and the Gulf War in 1991. Though both were specifically authorized by the Security Council under Chapter VII, and therefore considered by the public to be UN operations,<sup>11</sup> they in effect consisted of alliances, both of which were organized and led by the United States. Their status under the Charter was somewhat unclear; on the one hand, they could be considered as forces the Security Council "deployed" under Article 42, though the Council retained almost no power over the organization of the forces and their actual operations; they could also be considered as merely collective self-defense operations authorized by the Council under Article 51; finally, they could be considered as simply falling under Chapter VII in general—as is the case, for example, with the establishment of the two War Crimes Tribunals<sup>12</sup> under that Chapter without any specific article to rely on.<sup>13</sup> The other type of non-UN operations are those that the Security Council "utilizes" under Article 53.1 of Chapter VIII ("Regional Arrangements").<sup>14</sup> Both types can be characterized as examples of the Security Council "franchising" military operations to an *ad hoc* coalition or a regional organization. In any event, in view of the minimal influence the Security Council has so far exercised over the actual conduct of these types of operations<sup>15</sup>—which is not to say that the Council could not, and perhaps should actually, exercise much stricter direction and supervision, as these operations could not legally take place without the Council's authorization—they will only be considered *en passant* in this study.

Reverting now to UN Blue Helmet operations, what are their main characteristics? The execution of each of these operations or forces is delegated by the

establishing organ, normally the Security Council but sometimes the General Assembly, to the Secretary-General, who thus acts, in a sense (though the term is never used), as Commander-in-Chief. To the extent that any aspect of such operations is not specified by the establishing organ—and typically this is true of most aspects except for the basic mandate and the force strength—these determinations must be made by the Secretary-General or under his authority. He himself delegates this authority in several ways: (i) to the Under-Secretary-General of the Department of Peacekeeping Operations (DPKO); (ii) for some operations also to a Personal or Special Representative, who is a high-ranking staff member; (iii) and, for each operation, to a Force Commander. The latter is a military officer seconded by a member State to the United Nations and thus employed by the latter as a staff member; he is therefore fully under the authority of the Secretary-General, and not under that of his government.<sup>16</sup> The force, itself, is made up of military personnel supplied (made available) by member States to the United Nations, normally in the form of a distinct unit (e.g., a platoon, company, battalion) with its own cadre of commissioned and non-commissioned officers. They perform their functions as ordered by the Force Commander, but their internal discipline is maintained according to their national regulations. In particular, the punishment of any violations takes place under national authority and not that of the United Nations.<sup>17</sup> These troops keep their national uniforms, but typically wear a blue helmet (hence their name) or beret and some shoulder insignia indicating that they constitute part of a UN force. They are also remunerated by and according to the rules of their country, though the UN provides them with a per diem and reimburses their governments for its outlays according to a uniform scale established by the General Assembly.

Thus, except for the Force Commander, the military component of a UN force (there may also be police and civilian components) consists of national contingents (military units or, rarely, individuals) voluntarily provided by member States,<sup>18</sup> operating under general UN command as to their operations but still under national authority as to their behavior. This also means that to the extent such units and persons are required by international and/or national law to abide by IHL, in whole or in part, these troops continue to operate under such constraints even while under UN command.<sup>19</sup> Whether these constraints could be loosened by the competent UN organs should they so direct is explored briefly below.

Though this has so far been the invariable practice in composing UN forces,<sup>20</sup> it should be noted that this is not the sole possible model. In principle, the United Nations could recruit military personnel directly (or by

secondment—as is the situation of the Force Commanders) and employ them as UN staff<sup>21</sup> to constitute a standing UN force. Currently, this is precluded by political and financial considerations, and therefore will not be further considered in this study. It should, however, be noted that Article 3A of the Institute of International Law's Zagreb Resolution<sup>22</sup> specifically foresees and deals with this possibility.

Finally, it should be noted that various UN forces have many different mandates. One can distinguish between peace-keeping (the maintenance of a "peace" or at least an agreed cease-fire), peace-making (the imposition by force of a cease-fire on warring entities, whether these be those of different countries or of governmental and irregular forces within a country), peace-building (the reconstruction of a peaceful society in place of a previous war-torn one)<sup>23</sup> and, perhaps, solely humanitarian tasks (those merely assisting other UN operations, such as UNHCR or UNICEF, or humanitarian NGOs in delivering and distributing food, medicine, and other humanitarian aid). A force may be created with a particular mandate and later have others imposed on it by the establishing organ. Though normally one distinguishes between Chapter VI½ and Chapter VII mandates, in practice this distinction may turn out to be rather artificial,<sup>24</sup> the important factor being the amount of force that is actually required by and available to the components of the operation to carry out their assignment.<sup>25</sup>

Thus, it is problematic to try to distinguish the status under IHL of a particular UN military operation, whether based on its name, its initial or even its current mandate, or its establishment under different provisions of the UN Charter. Similarly, in light of how the conflict in Yugoslavia changed from an internal one within the SFRY to an international one as various constituent Republics gained *de facto* and later recognized *de jure* independence, and to some extent the similar developments within Bosnia itself, any conclusions as to the status or responsibilities of a UN force under IHL depending on whether a conflict is a civil or an international one is likely to lead to confusion and uncertainty.<sup>26</sup> Probably the only useful criterion is whether or not a force is actually engaged in combat.<sup>27</sup>

## Application of IHL to UN Forces

### *Multilateral Treaties*

The United Nations is not a party to any of the multilateral treaties in which the principles and rules of IHL are expressed. Although for some time the

ICRC pressed the organization to become a party to the 1949 Geneva Conventions, especially to Convention IV Relative to the Protection of Civilian Persons in Time of War,<sup>28</sup> the United Nations raised two basic objections:<sup>29</sup> (i) although intergovernmental organizations can become parties to treaties with States,<sup>30</sup> including multilateral ones, the 1949 Geneva Conventions were only designed, as appears from their final clauses, for participation by States; and (ii) numerous provisions, especially of Convention IV, could only apply to States, which can exercise full governmental functions, such as the arrest, prosecution, trial and imprisonment of offenders against the Convention—which the United Nations is not equipped to do.<sup>31</sup> Moreover, it was considered somewhat unseemly to suggest that the United Nations might be “a party” to a military conflict. Finally, the United Nations has pointed out that all the States that contribute military units to a UN operation are in any event bound by the principal IHL treaties, as well as by customary IHL, and the obligations of these units thereunder are not diminished by the fact that they are in UN service.

Using similar arguments, the United Nations also resisted making any general declaration of acceptance of any or all such treaties. When it was suggested that the organization might in such a declaration indicate that its acceptance does not apply to parts of the treaties that are inapplicable to anyone except a sovereign State, the UN objected that such a selective acceptance might actually endanger or weaken the integrity of the instruments in question. Instead, it had (as recalled below) in many instances undertaken to observe the “principles and spirit,” or more lately the “principles and rules,” of these conventions.<sup>32</sup> Outside observers considered this formulation inadequate, preferring instead an undertaking to apply the instruments “*mutatis mutandis*.” The organization was unwilling to go that far.<sup>33</sup>

There have been a few instances in which the United Nations has, in effect, acted as at least a temporary territorial sovereign, but fortunately in these instances no combat of any sort took place that would have raised obligations under IHL. The first of these situations arose when the organization facilitated the transfer of West New Guinea from The Netherlands to Indonesia (October 1962 to April 1963), for which purpose it established the United Nations Security Force in West New Guinea (West Irian) (UNSF).<sup>34</sup> In the case of Namibia, although the General Assembly had invalidated South Africa’s League of Nations mandate over South-West Africa (Namibia), the actual arrangements by the Security Council for the establishment of the United Nations Transition Assistance Group (UNTAG)<sup>35</sup> were such that the Council accepted the continuation of *de facto* South African control over the territory, to be exercised under UNTAG supervision until the attainment of independence—thus no

question of the UN exercising sovereign authority arose. Although the establishment of the United Nations Operation in Somalia (UNOSOM I & II)<sup>36</sup> was on the basis that no effective government existed for the country, the mandates assigned to UNOSOM did not contemplate it exercising genuine governmental authority. As part of the resolution of the Croatia/Serbia conflict, the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) administered the indicated areas in Croatia (formerly the Eastern Slavonia UNPA) from 1996 to 1998.<sup>37</sup> In 1999 the United Nations established "an international civil presence in Kosovo," in effect in a condominium with NATO, which is charged with establishing an "international security presence" there,<sup>38</sup> as well as the United Nations Transitional Administration in East Timor (UNTAET), which is "empowered to exercise all legislative and executive authority, including the administration of justice."<sup>39</sup>

In spite of the UN's resistance to accepting the Geneva and other IHL treaties by participation or a general declaration, the organization has, as discussed below, recognized their binding nature in respect of particular operations, both by means of the regulations issued for them and by the bilateral agreements concluded with host States and with troop-contributing States.

### *International Customary Law*

The United Nations has never denied that its military operations are subject to customary IHL or that the substance of most of the significant IHL treaties has passed into customary law. Although questions might surface about the customary law character of those parts of the Protocols I and II to the 1949 Geneva Conventions that had not already had that character before their adoption, such doubts do not appear to have been raised by the United Nations itself.

In the mid-1960s (evidently in wake of the Congo operation)<sup>39</sup> a number of semi-official suggestions were made for the United Nations to accept explicitly the applicability of IHL to its forces. These included resolutions adopted at the 20th International Conference of the Red Cross<sup>40</sup> and at the 52nd Conference of the International Law Association (ILA).<sup>41</sup> After studying this question from 1965, the private but highly respected Institute of International Law at its 55th session, held in Zagreb in 1971, adopted a resolution on "Conditions of the Application of Humanitarian Rules of Armed Conflict to Hostilities in which United Nations Forces May Be Engaged,"<sup>42</sup> of which Article 2 reads as follows:

The humanitarian rules of law of armed conflict apply to the United Nations as of right, and they must be complied with in all circumstances by United Nations Forces which are engaged in hostilities.

The rules referred to in the preceding paragraph include in particular:

- (a) the rules pertaining to the conduct of hostilities in general and especially those prohibiting the use or some uses of certain weapons, those concerning the means of injuring the other party, and those relating to the distinction between military and non-military objectives;
- (b) the rules contained in the Geneva Conventions of August 12, 1949;
- (c) the rules which aim at protecting civilian personnel and property.

It might also be noted that the 1994 Convention on the Safety of United Nations and Associated Personnel, which was adopted by the General Assembly, explicitly excludes from its coverage "a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations . . . to which the law of international armed conflict applies."<sup>43</sup> This implies that the Assembly appeared to consider that IHL applies to at least some Chapter VII operations.

### *Powers of the Security Council*

The question might be asked whether the General Assembly or the Security Council could exempt the United Nations and its forces from any of the provisions of IHL.

As to the General Assembly, the answer would appear to be negative, for all it may do under Charter Articles 10 and 11 is make recommendations to member States. The Security Council can, of course, make decisions that are binding on members by Charter Article 25 and, for decisions made by the Council under Chapter VII, also by Article 48.1. This, then, brings Charter Article 103 into play, under which in case of conflict between the obligations of a member under the Charter and their obligations under any other international agreement, the former—and these certainly include binding decisions of the Council—prevail. Thus, it would seem that the Council could supersede merely treaty-based IHL obligations.

Whether and to what extent Article 103 also applies to international customary law is not clear from the wording of that provision, though in general it

would seem that it should apply at least by analogy. This, however, would probably not be true of any principles of IHL that are *jus cogens*,<sup>44</sup> as many commentators have asserted in general or with reference to particular rules. The difficulty is that, in the absence of any authoritative determination of what, if any, IHL principles have attained that unassailable status,<sup>45</sup> any limits on the powers of the Security Council in this regard are vague.

It should be noted that this discussion is entirely theoretical, for, so far, the Security Council has in no instance given any instruction to a UN operation, or authorization to a franchised one, that explicitly or implicitly contravened any IHL principle.<sup>46</sup>

### The Practice of the United Nations Relating to the Applicability of IHL to Its Military Forces

#### *Past and Recent Practice*

**Particular Regulations.** The Regulations issued by the Secretary-General for the conduct of the early peace-keeping operations of the United Nations, i.e., UNEF I,<sup>47</sup> ONUC,<sup>48</sup> and UNFICYP,<sup>49</sup> contained the following provision:

The Force shall observe *the principles and spirit* of the general international Conventions applicable to the conduct of military personnel. (Emphasis added.)

In a February 21, 1966, exchange of letters between the Secretary-General and the Canadian Permanent Representative to the United Nations, the former clarified this provision of the UNFICYP Regulations as follows:

11. The international Conventions referred to in this Regulation include, *inter alia*, the Geneva (Red Cross) Conventions of 12 August 1949 [United Nations, *Treaty Series*, Vol. 75, pp. 31, 85, 135, and 287]<sup>50</sup> to which your Government is a party and the UNESCO Convention on the Protection of Cultural Property in the Event of Armed Conflict, signed at the Hague on 14 May 1954 [United Nations, *Treaty Series*, Vol. 249, p. 215].<sup>51</sup> In this connexion, and particularly with respect to the humanitarian provisions of these Conventions, it is requested that the Governments of the participating States ensure that the members of their contingents serving with the Force be fully acquainted with the obligations arising under these Conventions and that appropriate steps be taken to ensure their enforcement."<sup>52</sup> (The original footnotes are reproduced within the brackets.)



However, such regulations have not been issued for later UN forces or operations, and thus, until the just-issued Secretary-General's Bulletin,<sup>53</sup> there were no explicit instructions to them in respect of IHL. However, as discussed below, for some time now pertinent provisions have been included in both SOFAs and the agreements with troop-contributing countries.

**Status-of-Forces Agreements.** Normally, whenever possible, the Secretary-General concludes a Status-of-Forces Agreement (SOFA) with each country in which a UN force is to operate, specifying in considerable detail the respective rights and obligations of the parties, particularly those regarding privileges and immunities. *Inter alia*, SOFAs exempt the members of the force from the criminal jurisdiction of the host State, leaving it for their national States to impose any disciplinary or criminal penalties in respect of at least the military members of the force, while providing for the possibility of the Secretary-General waiving the immunity of civilian members (e.g., UN staff).

Although no provision relating to IHL appeared in the Model SOFA communicated by the Secretary-General to the General Assembly in 1990,<sup>54</sup> in recent years the following provision has been included in these instruments:

Without prejudice to the mandate of [acronym for the force—hereafter UNX] and its international status:

(a) the United Nations shall ensure that UNX shall conduct its operations in [host State] with full respect for the principles and spirit of the general conventions applicable to the conduct of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the Event of Armed Conflict.

(b) the Government undertakes to treat at all times the military personnel of UNX with full respect for the principles and spirit of the general international conventions applicable to the treatment of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977.

UNX and the Government shall therefore ensure that members of their respective military personnel are fully acquainted with the principles and spirit of the above-mentioned international instruments.<sup>55</sup>

Section 3 of the Secretary-General's Bulletin provides that in SOFAs the United Nations will ensure that its forces fully respect "the general conventions applicable to the conduct of military personnel" and that its forces be fully

acquainted with these principles and rules. It is further stated that the same obligations are to apply even in the absence of a SOFA.

**Agreements with Troop-Contributing States.** The Model Agreement between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peacekeeping Operations contains the following standard clause:

#### APPLICABILITY OF INTERNATIONAL CONVENTIONS

28. [The United Nations peace-keeping operation] shall observe and respect the principles and spirit of the general international conventions applicable to the conduct of military personnel. The international conventions referred to above include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the event of armed conflict. [The Participating State] shall therefore ensure that the members of its national contingent serving with the [United Nations peace-keeping operation] be fully acquainted with the principles and spirit of these Conventions.”<sup>56</sup>

In practice, however, formal agreements along these lines are only rarely concluded with troop-contributing States.<sup>57</sup> Presumably, were the Organization to insist on the conclusion of such agreements, it might find it even more difficult to secure sufficient contingents for its several operations.

On October 29, 1998, Bernard Miyet, Under-Secretary-General for Peacekeeping, announced to the Fourth Committee of the General Assembly that troop-contributing States would be asked not to send civilian police or military observers younger than 25, and that troops in national contingents should preferably be 21 but no less than 18.<sup>58</sup> Aside from promoting thereby the principle that children under 18 should not participate in military forces, the minimum ages specified should help ensure that UN forces are constituted of persons mature enough to observe IHL.

On August 25, 1999, the Security Council adopted a resolution on children in armed conflict, which *inter alia* requests the Secretary-General to ensure that the personnel involved in UN peacemaking, peacekeeping and peace-building activities “have appropriate training on the protection, rights and welfare of children.”<sup>59</sup>

#### *General Regulation*

**Development.** Already many years ago it was suggested, in particular by the ICRC, that the United Nations should issue a general regulation (or

incorporate a section in a general directive concerning the governance of UN military forces) setting out somewhat more detailed provisions concerning the observance of IHL, which would supplement the rather anodyne clauses recited above. The General Assembly's Special Committee on Peacekeeping Operations in April 1995 called on the Secretary-General "to complete the elaboration of a code of conduct for United Nations peace-keeping personnel, consistent with applicable international humanitarian law, so as to ensure the highest standards of performance and conduct."<sup>60</sup>

In June 1994 the ICRC arranged a Symposium on Humanitarian Action and Peace-keeping Operations, and as a follow-up it convened in March and October 1995 brief meetings of experts "to draw up a list of rules of international humanitarian law which were applicable to peace-keeping and peace-enforcement operations and which should be taught in training programmes for all troops supplied to the United Nations."<sup>61</sup> The ICRC's experts designed a relatively short list of rules excerpted from the basic instruments of IHL, going back as far as the 1868 St. Petersburg Declaration<sup>62</sup> but relying most heavily on the 1977 Protocol I to the 1949 Geneva Conventions.

This draft was conveyed to the Secretary-General and was considered within the Secretariat for a number of years. This lengthy dwell time resulted from several factors, including the diminished urgency due to the recent reduction in the number of UN operations in which military personnel are used for any except rather modest protective functions. In this context, the extensive references to combat operations and their consequences, such as the taking of prisoners and the custody of enemy wounded, and the need to protect civilians both in combat and in occupied territory, seemed to give a misleading impression of the scope and nature of UN military operations, especially the current ones. One can also imagine that at least some of the troop-contributing States would have expressed unease concerning the use of extracts from carefully negotiated treaties, in which particular rules are separated from the precisely worded restrictions and limitations in which they were originally embedded, and the heavy reliance on Protocol I, which has not yet gained the adherence of many of the principal troop contributors (though the particular provisions relied on are presumably not the ones these States find objectionable in the Protocol). Thus, it could not have been easy to find a middle ground between, on the one hand, the former general references to the principal conventions and, on the other, an unconditional acceptance of these instruments, by picking and choosing as especially binding only the most significant provisions.

Although the General Assembly's Special Committee on Peacekeeping Operations, while continuing to urge the completion of this project, also expressed

the view that it itself be consulted thereon,<sup>63</sup> the Secretary-General ultimately held no formal consultations with the Committee or with any other intergovernmental body, but rather informally circulated a draft of the Bulletin to members of the Committee and took into account certain of their suggestions. The Bulletin,<sup>64</sup> whose substantive provisions apparently depart only slightly from the 1995 ICRC experts' draft, was promulgated by the Secretary-General on August 6, 1999, on his own authority.

**Provisions.** The Secretary-General's Bulletin consists of an introductory paragraph followed by ten Sections, many divided into several paragraphs. Sections 1–4 and 10 deal with essentially formal matters, while Sections 5–9 set out the substantive provisions.

Section 1, on "Field of application," specifies in paragraph 1.1 that the Bulletin applies to those situations when UN forces are engaged in armed conflict, whether in enforcement actions or as peace-keepers authorized to use force in self-defence; paragraph 1.2 states that the promulgation of the Bulletin does not affect the protection afforded to members of UN peacekeeping operations by the 1994 Convention.<sup>65</sup> Section 2, "Application of national law," merely states that the provisions of the Bulletin are not intended to constitute an exhaustive catalogue of IHL and that they are not intended to prejudice the full application of IHL, as well as of applicable national laws, to national contingents. The provisions of Section 3, "Status-of-forces agreement," were discussed above.<sup>66</sup> Section 4, "Violations of international humanitarian law," reaffirms that such violations are to be prosecuted in national courts<sup>67</sup>—though, presumably, this would not exclude the jurisdiction of the nascent International Criminal Court or of either of the existing War Crimes Tribunals (ICTY and ICTR) in applicable cases. Section 10, "Entry into force," establishes that date as August 12, 1999, the 50th anniversary of the Geneva Conventions.

The provisions of Section 5, "Protection of the civilian population," Section 6, "Means and methods of combat," Section 7, "Treatment of civilians and persons *hors de combat*," Section 8, "Treatment of detained persons," and Section 9, "Protection of the wounded, the sick, and medical and relief personnel," are evidently adapted largely from the 1907 Hague Conventions, the 1949 Geneva Conventions, and especially from the 1977 Protocol I thereto. As the specific sources are not indicated in the Bulletin, an attempt to do so has been made in Appendix II, which indicates what the apparent principal source of each provision of the Bulletin is and what other parts of the codified IHL, and even some other provisions of international law, appear relevant. From that table it appears that for the most part the paragraphs of Sections 5, 6 and 7 are precise

paraphrases of the indicated provisions of Protocol I, and those in Section 9 of Geneva Convention I, generally merely substituting "The United Nations force" for "The Parties to the conflict" or for the impersonal passive mode. On the other hand, the sub-paragraphs in Section 8 rely more indirectly on Geneva Convention III.

**Potential Questions.** The Secretary-General issued his Bulletin on his own authority, deriving from his positions as "chief administrative officer" of the United Nations<sup>68</sup> and *de facto* Commander-in-Chief of UN Blue Helmet operations. In doing so, he was also responding to the 1995 call of the General Assembly's Special Committee on Peacekeeping Operations<sup>69</sup>—though not to its recent request that it be consulted in the process.<sup>70</sup>

Incidentally, even though the Special Committee in this pronouncement referred to "guidelines," which suggests a non-binding set of norms, its 1995 report had referred to a "code of conduct" and the actual Bulletin is drafted in that sense. It should be noted that the operative verbs in Sections 5–9 are all "shall," "shall not," "is prohibited," and similar expressions, thereby indicating binding obligations or prohibitions. There is no doubt that as Commander-in-Chief, the Secretary-General is authorized to express such commands and that if any troop-contributing State should object to such rules, it may not cause its troops to defy or disregard the Bulletin but can only withdraw them from UN operations.

Although the Secretary-General had implicit authority to promulgate the Bulletin, this is not the only way in which it could have been issued and given legal force. Either the General Assembly or the Security Council could have promulgated such a code and, indeed, if either should now do so, such code would, at least as far as it specified, supersede that of the Secretary-General. Equally, it would be possible for either the Assembly or the Council to nullify the new Bulletin,<sup>71</sup> but the Secretary-General must have calculated both that this is most unlikely to happen and that the likelihood of either of those bodies reaching an early agreement on any code of their own as also being minimal.

It is also clear that by its terms the Bulletin only applies to "United Nations forces conducting operations under United Nations command and control."<sup>72</sup> It thus does not purport to apply to operations merely authorized by the Security Council (such as those described earlier). Nor could the Secretary-General have issued any code or even guidelines in respect of such operations, which are not under his command; at most he can suggest to the Council that some such rules be issued.<sup>73</sup> Only the Security Council could, as a condition for authorizing any military operation to be carried out by States or by regional organizations, whether under Charter Article 42, 51, or 53, make it a condition that

these be carried out in compliance with general or specific provisions of IHL, such as those set out in the Bulletin, applied *mutatis mutandis*.

It should be noted that even though paragraph 1.2 of the Bulletin refers to the 1994 "Safety" Convention, and that treaty refers to the applicability of IHL to certain UN operations,<sup>74</sup> these two instruments do not fit together seamlessly. The Convention excludes from its coverage Chapter VII operations "in which any of the personnel are engaged as combatants against organized armed forces," while the Bulletin applies to all situations (that is, not only Chapter VII operations or those in which the opponents are organized armed forces) of armed conflict when UN forces are engaged therein as active combatants. Thus, there may be situations in which both the Bulletin and the Convention would seem to apply (e.g., self-defensive combat in Chapter VI½ operations, or Chapter VII ones against unorganized militias)—but there is no reason to fear that this would lead to any practical difficulties.

As to the substantive provisions of the Bulletin, it might be remarked that in a few respects these do not reflect the most recent developments—presumably because they were based on a draft prepared by ICRC experts in 1995. One of these is the failure to refer, in the recitation in the last sentence of paragraph 6.2, which is evidently based on the original three protocols to the 1980 Inhumane Weapons Convention,<sup>75</sup> to the blinding laser weapons prohibited by the 1995 Protocol IV to the Convention.<sup>76</sup> Of course, it should not be difficult to correct any oversights or to make other desired changes in the Bulletin, as the Secretary-General can issue addenda, amendments or revisions at any time.

### Special Protection of UN Forces

In considering the applicability of IHL to UN forces, account should also be taken of several recent treaties by which the States parties are to accord special protection to these forces, as well as to other related UN operations and personnel and to those of other intergovernmental and even non-governmental organizations. In this connection, it should be noted that the principal IHL treaties, in particular 1949 Geneva Convention IV and 1977 Protocol I, do contain provisions protecting humanitarian activities carried out by organizations of a non-military character,<sup>77</sup> which might apply to UN operations such as those of UNHCR, UNICEF and the World Food Programme, but not to any Blue Helmet force.

The first protective provision referring directly to UN forces appeared in the 1980 Mines Protocol<sup>78</sup> to the 1980 Inhumane Weapons Convention,<sup>79</sup> in which Article 8, "Protection of United Nations forces and missions from the

effects of minefields, mines and booby-traps," deals in paragraph 1 with "a United Nations force or mission [that] performs functions of a peacekeeping, observation or similar function" and in paragraph 2 with "a United Nations fact-finding mission." This Protocol was considerably expanded and strengthened, also in respect of the above-mentioned provisions, by an amendment adopted on May 3, 1996, at a Review Conference for the Convention.<sup>80</sup>

On December 9, 1994, the General Assembly, in response to ever more frequent attacks on United Nations peace-keeping and similar forces and operations and the significant toll these were taking in deaths and injuries, adopted the Convention on the Safety of United Nations and Auxiliary Personnel.<sup>81</sup> As already pointed out, Article 2 of the Convention excludes its application to Chapter VII operations. Paragraph 1.2 of the new Bulletin explicitly provides that its promulgation does not "affect the protected status of members of peace-keeping operations" under the Convention, "as long as they are entitled to the protection given to civilians under the international law of armed conflict."

Finally, the Rome Statute of the International Criminal Court<sup>82</sup> includes in the definition of "war crimes" that are to fall within the jurisdiction of the Court:

Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

whether these take place in an "international armed conflict" or in an "armed conflict not of an international character."<sup>83</sup> Here again, UN forces engaged in actual combat operations would seem to be excluded—though it is not clear to what extent this depends on their establishment under Charter Chapter VI½ or VII.

### Positive Obligations of UN Forces

In connection with some UN operations, especially those with very limited mandates, the question has arisen to what extent their personnel are required or even allowed to intervene in violations of IHL that they can actually observe or of which they are otherwise reliably informed.

UN forces are generally restricted to operating within their mandates; this is especially true when these mandates, as in all Chapter VI½ situations, depend on the consent of all parties to a conflict. Furthermore, the forces are in

practical terms restricted by their small size and feeble armaments, which are usually quite limited in Chapter VI½ and even in Chapter VII operations. The conditions under which a given force may be allowed to use force in situations other than strict self-defense, that is, in defense of other persons, may be covered in its rules of engagement; currently, consideration is being given to drafting a set of model rules of engagement for UN peace-keeping operations in which instructions on this point might be included. The sentiment has been expressed that UN forces should be given mandates, and presumably appropriate arms, to prevent violations of IHL of which they become aware.<sup>84</sup>

Finally it should be noted that whenever the United Nations is in *de facto*, and especially if in *de jure*, control of any territory, then it may have a legal as well as a moral obligation to prevent, as far as it is able, violations of IHL in such territory.

### Cooperation with International Tribunals

With the establishment by the Security Council of the two *ad hoc* War Crimes Tribunals, the International Criminal Tribunal for the Former Yugoslavia<sup>85</sup> and the International Criminal Tribunal for Rwanda,<sup>86</sup> and the possible creation of additional ones at least before the entry into force of the Statute of the International Criminal Court, another set of problems has arisen for certain UN forces and for related UN civilian operations—to what extent are these forces and operations obliged to cooperate with tribunals, in particular by making available knowledgeable persons as witnesses, as well as relevant documentation?

Liminally, it is possible to take two conceptually different approaches to these questions. When a question arises as to cooperation between a Security Council-established UN force and a Council-established tribunal, it could be held that it is one that ultimately the Council must determine. Thus, if the Secretary-General, in his capacity as the Commander-in-Chief of a UN force, determines that certain cooperation demanded by a tribunal would be inimical to some aspect of the operation of the force, he or the tribunal would refer this conflict to the Council and secure its determination whether in a given instance (or a class of instances) one or the other of these subsidiary organs of the Council should prevail.

Alternatively—and this is the approach that has actually been adopted—the Secretary-General can, in light of the complete judicial independence of the tribunals, treat them essentially at arms length and apply by analogy the relevant provisions of the Convention on the Privileges and



Immunities of the United Nations, which in respect of the courts and other authorities of States parties (but not of international tribunals) provides that:

Privileges and immunities are granted to [officials] [experts] in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any [official] [expert] in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.<sup>87</sup>

Applying this principle to the military members of UN forces and to civilian members of these and other UN operations, such persons are to be made available to a UN tribunal when this can be done without prejudice to the interests of these forces and operations. In addition, the Secretary-General has decided that it is also his duty to act equitably as between the tribunals' prosecutor and the defendants, so that assistance rendered to one side (e.g., in interviewing potential witnesses) must equally be rendered to the other. That is, the Secretary-General will, in appropriate cases, waive any conceptual immunity, and both authorize and direct cooperation. Presumably, should a tribunal not be satisfied with the Secretary-General's cooperation, it could complain to the Security Council.

In the case of a military member of a force contingent provided by a UN member State, the latter must evidently give its consent, whether or not the soldier is one still in active service with the United Nations or has returned to his home country. These States are under an obligation to cooperate with the tribunals pursuant to their respective Statutes, which are binding on member States under Charter Articles 25 and 48.1.<sup>88</sup> Nevertheless, to the extent that a UN tribunal requires information or testimony from such personnel that was acquired while in UN service, the Secretary-General's authorization is also required.

Possible objections to full cooperation with a tribunal's demands can derive from several considerations: safety of the potential witness (e.g., if s/he continues to serve in an area controlled by associates of an accused); security and effectiveness of the mission; and the confidentiality of the internal affairs of the United Nations (e.g., the process by which an operational decision was reached).

In practice, the United Nations has allowed military and civilian personnel to be interviewed by the prosecutor and/or by defense counsel and to testify before the tribunals. For example, General Dallaire, Commander of the UN Observer Mission Uganda-Rwanda (UNOMUR), who was a Canadian officer seconded to the United Nations and thus served as a UN staff member, was first permitted to be interviewed by representatives of both the prosecutor and

of defense counsel for Jean-Paul Akayesu. Later, the Secretary-General authorized him to testify before the Rwanda Tribunal on matters relevant to the charges against Akayesu, but not on matters internal to the United Nations or UNOMUR. In giving his testimony, the General was accompanied by a member of the UN Office of Legal Affairs, who advised the Tribunal as to the meaning of the restriction in the waiver.

Similar considerations apply to making available documents and files to the tribunals, their prosecutor, and defense counsel. An additional consideration in respect of requests for documents is that these must be reasonable in terms of the quantity of files involved, especially if a request evidently amounts to a "fishing expedition."

As to the arrest of persons indicted by a UN tribunal, any obligation of a UN force to do so would depend in the first instance on its mandate (established by the Security Council) and in practice on the realistic possibility of accomplishing the task in light of, *inter alia*, the actual military resources available.

In due course, arrangements will have to be made with the International Criminal Court for the provision of information and documents and for dealing with requests for the release of information made available in confidence by the United Nations to a State and then requested from the latter by the Court.<sup>89</sup> Presumably such arrangements will reflect the UN's experience in respect of its own tribunals.

### Reflections and Proposals

The promulgation by the Secretary-General of his Bulletin on the observance by United Nations forces of international humanitarian law would seem to lay to rest any possible doubts as to both the obligation and the readiness of these forces to comply with IHL in all appropriate situations, that is, when such forces are actually engaged in combat.

The long reluctance of the organization to state so generally and unequivocally, and any lingering national objections now that it has done so, probably reflect the still prevailing ambivalence about the deployment of such forces. This ambivalence, in turn, reflects several considerations: concern for State sovereignty threatened by ever-increasing encroachments of international organizations; an essentially pacifist inclination that even in the face of major provocations and great evils, the United Nations should perform its tasks through diplomacy rather than military force; the somewhat mixed record of the many operations hastily mounted in the early 1990s after the end of the Cold War and the resulting doubts about the ability of international organizations to

conduct military operations effectively; and finally, the mixed reactions some States may have about any given operation, arising from historical alliances and prejudices or genuinely different interests. In spite of this ambivalence, it should be recognized that as the world community is at present constituted, there will be occasions, whether many or few, when the use of collective military force will be necessary—just as was foreseen half a century ago by the founders of the United Nations. What is important is that such use of force always reflect the collective will of the world community, and at present such collective will can be expressed only through the competent organs of the United Nations.

What is equally important is that when military force is used by the world community, it should invariably be subject to the civilizing restraints of international humanitarian law, as expressed in relevant customary international law and especially as set out in numerous universal treaty instruments—including those that were negotiated and adopted only recently by great majorities in international fora, even if these have not yet been formally ratified by all States. In other words, if and when the United Nations—always reluctantly—sallies forth to do battle, it should only do so subject to all restraints that reflect the most advanced humanitarian principles on which a large measure of—but not necessarily universal—agreement has been reached. The Secretary-General's Bulletin is well designed to help to ensure that this be so.

Although there can be no doubt that the Secretary-General had the authority to promulgate the Bulletin, it would certainly acquire greater gravitas and receive more respect from States and even from unofficial armed forces if it were explicitly endorsed by the competent political organs, ideally by the General Assembly acting on a recommendation of the Security Council. Furthermore, the Council could and should provide that the fundamental principles and rules set out in the Bulletin—or at least a general statement about the need to observe IHL—should also apply to all military operations authorized by the Council, whether as a delegated or franchised military operation under Charter Article 42, or in self-defense under Article 51, or carried out by a regional organization under Article 53.1

Now that the extensive spadework to articulate a set of IHL principles and rules has been accomplished, it is important to see to their full implementation. In particular, the undertaking set out in Section 3 of the Bulletin, that the members of all UN forces will be made fully acquainted with the principles and rules of the general conventions applicable to the conduct of military personnel, should be carried out—which will evidently require the cooperation of actual and potential troop-contributing States. The result should be to raise the standards by which these forces operate so as to leave no doubt that in all

instances not only the letter but the spirit of international humanitarian law is being scrupulously observed. Even in the sorry business of war, the United Nations should establish the highest legal standard and set the best example.

### Notes

1. Secretary-General's Bulletin on "Observance by United Nations forces of international humanitarian law" (ST/SGB/1999/13 of 6 August 1999) [hereinafter Secretary-General's Bulletin or SGB], 38 ILM 1656 (1999). The text is set out in Appendix I hereto.

2. The (First) United Nations Emergency Force (UNEF I) (1956–1967). This was not, however, the first of what is now known as the "Blue-Helmet" operations, as it was preceded by two observation groups: the UN Truce Supervision Organization (UNTSO), established in 1948 and still operating in the Middle East, and the UN Military Observer Group in India and Pakistan (UNMOGIP), established in 1949 and also still in operation. For a description of all the 41 operations established before June 1996, see *THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING* (UN/DPI, Third Edition, 1996): for UNEF I, Chapter 3; for UNTSO, Chapter 2; for UNMOGIP, Chapter 8.

3. United Nations Operation in the Congo (ONUC) (1960–1964), see *id.* Chapter 10.

4. United Nations Transition Assistance Group (UNTAG) (1989–1990), see *id.* Chapter 11.

5. This question has been extensively explored in the literature. See, in particular: FINN SEYERSTED, *UNITED NATIONS FORCES IN THE LAW OF PEACE AND WAR* (1966); Rudolf Bindschedler, *Les conditions d'application des lois de la guerre aux opérations militaires des Nations Unies*, in 54:II ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL (1971); Yves Sandoz, *L'application du droit humanitaire par les forces armées de l'organisation des Nations Unies*, in 60 REVUE INTERNATIONALE DE LA CROIX-ROUGE 274 (1978); Dietrich Schindler, *United Nations Forces and International Humanitarian Law*, in *STUDIES AND ESSAYS ON INTERNATIONAL HUMANITARIAN LAW AND RED CROSS PRINCIPLES IN HONOUR OF JEAN PICTET* (Ed. Christopher Swinarski, ICRC, 1984); HORST RISSE, *DER EINSATZ MILITÄRISCHER KRÄFTE DURCH DIE VEREINTEN NATIONEN UND DAS KRIEGSVÖLKERRECHT* (1988); Daphna Shrager & Ralph Zacklin, *The Applicability of International Humanitarian Law to United Nations Peace-keeping Operations: Conceptual, Legal and Practical Issues*, in *SYMPOSIUM ON HUMANITARIAN ACTION AND PEACE-KEEPING OPERATIONS* 39 (Ed. Umesh Palwankar, 1994); Luigi Condorelli, *Le statut des forces de l'ONU et le droit international humanitaire*, 1995 RIVISTA DE DIRITTO INTERNAZIONALE 881; Hilaire McCoubrey & Nigel D. White, *The Laws of Armed Conflict and UN Forces*, Chapter 8 of their *THE BLUE HELMETS: LEGAL REGULATION OF UNITED NATIONS MILITARY OPERATIONS* (Dartmouth, 1996); Daphna Shrager, *The United Nations as an Actor Bound by International Humanitarian Law*, in 5:2 INTERNATIONAL PEACEKEEPING 64 (summer 1998) (which constitutes a revision of a paper with the same title included in the Condorelli Colloque (next sentence *infra*)). An especially important set of discussions on *The United Nations involvement in armed conflicts and international humanitarian law* by, *inter alia*, Zacklin, Sandoz, Shrager, Jean de Courton, Claude Emanuelli, Françoise Hampton, Theodor Meron and Condorelli, is included in *THE UNITED NATIONS AND INTERNATIONAL HUMANITARIAN LAW* (Actes du Colloque International à l'occasion du cinquantième anniversaire de l'ONU, sous la direction de Luigi Condorelli (Geneva 19–21 October 1995, Editions Pedone) [herein "Condorelli Colloque"]. See also the brief discussion in which this author participated during the ASIL panel "From Keeping the Peace to Making It: The Changing Role of UN Security Forces," in 88 ASIL PROCEEDINGS 328, at 349–350 (1994). The

subject is also mentioned in many studies of UN peace-keeping operations, of which a very complete bibliography was compiled by Michael Bothe, *Peace-Keeping*, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 565–72 (Ed. Bruno Simma, 1994), as well as in other sources cited in that study.

6. As explained below, this name derives from the blue headgear that is added to the uniforms of members of national contingents when these become parts of a UN military force.

7. Notably UNEF I, by A/RES/998 (ES-I) of 4 November 1956, and the continuation of ONUC after the Security Council became deadlocked, by A/RES/1474 (ES-IV) of 20 September 1960. When the legality of these General Assembly actions was challenged by certain member States, which as a consequence refused to pay their corresponding assessments (thus throwing the organization into its first financial crisis), the Assembly queried the World Court, which responded in the *Certain Expenses* Advisory Opinion (1962 I.C.J. REPORTS 151) that the Assembly had the requisite authority.

8. Chapter VI of the Charter is titled “Pacific Settlement of Disputes,” and although peace-keeping operations would seem to fall under that rubric, none of the specific articles in that chapter (Articles 33–38) contain any provision that can plainly be held to authorize the despatch of UN forces. On the other hand, Chapter VII, “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression,” whose Article 42 does foresee such forces (but see *infra* note 9) requires an explicit finding by the Security Council of such a threat, breach or act, and findings of this nature are usually not made in connection with peace-keeping operations. Thus, the absolutely binding nature of Council actions under Article 48.1 of the Charter does not come into play (though the Article 25 undertaking of all UN members to accept and carry out decisions of the Council does apply), and peace-keeping operations are traditionally based on the consent of all parties to the dispute for the deployment of the force—as a consequence of which no fighting is expected and these forces are normally only lightly armed; their normal function is to interpose themselves between hostile forces that are bound by a cease-fire, armistice or truce to refrain from fighting, so that they can observe and report, or sometimes carry out or assist in carrying out humanitarian operations.

9. Thus, UNPROFOR in former Yugoslavia was originally established as a Chapter VI½ peace-keeping operation, but was a year later explicitly converted into a Chapter VII operation after a number of French peace-keepers were killed in a Croatian attack on Serb-occupied areas in the Kraina. See *infra* note 24.

10. It has, however, been argued that UN peace-making forces are not really established under Article 42, because in the absence of any Article 43 agreements under which UN members are to make available forces that can be called upon by the Council, all operations so far have had to rely on the entirely voluntary contribution of military units by a limited number of members. This can be countered by pointing out that under Article 48.1 all member States are obliged to comply with Chapter VII decisions of the Council, presumably including orders to provide military forces; in this view, Article 43 agreements would only be a convenience in implementing, but not a prerequisite for Article 42 operations.

11. This was particularly true of the Korean operation, which was authorized to use the UN flag; Security Council Resolution 84 (1950) of 7 July 1950, para. 5.

12. See *infra* notes 85 and 86.

13. See this author's somewhat lengthier analysis of this question in *ALLOCATION OF LAW ENFORCEMENT AUTHORITY IN THE INTERNATIONAL SYSTEM: PROCEEDINGS OF AN INTERNATIONAL SYMPOSIUM OF THE KIEL INSTITUTE OF INTERNATIONAL LAW*, March 23 to 25, 1994, 17, at 28–30 (Ed. Jost Delbrück, 1995).

14. It is possible to characterize the ECOWAS/ECOMOG operations in Liberia [indirectly endorsed by SC Presidential Statements of 22 July 1991 (S/22133) and 7 May 1992 (S/23886), *et seq.*] and later in Sierra Leone [indirectly endorsed by SC Presidential Statements of 11 July and 6 August 1997 (S/PRST/1997/36 and 42), *et seq.*] as falling under this rubric.

15. In effect, all it has required are occasional reports; see for Korea, Security Council Resolution 84 (1950) of 7 July 1950, para. 6; and, for Iraq, Security Council Resolution 678 (1990) of 29 November 1990, para. 4. See also paragraph 18 of SC Resolution 794 (1992) in connection with the Somalia operation referred to *infra* note 36.

16. By virtue of Charter Article 100.1–2. However, Force Commanders seconded from major powers have perhaps not always maintained the required distance from their national authorities.

17. This principle is reaffirmed, in respect of violations of IHL, by Section 4 of the SGB, *supra* note 1.

18. As mentioned above, Charter Articles 43 and 45, under which member States are to hold available and in case of need provide to the United Nations specially designated military units, have never yet been implemented. Consequently, each national unit supplied to a UN force is provided on an *ad hoc* basis, usually under a standard agreement between the UN and the government concerned, and can be withdrawn by the government at any time (though normally this is done only at the end of a prescribed rotation period, usually six months).

19. This is in effect reaffirmed by Section 2 of the SGB, *supra* note 1.

20. Actually, there is one minor exception: The force that protects the distribution of food to civilians (mostly Kurds) in northern Iraq consists, for complex political reasons, of UN "Guards," i.e., of persons who normally either serve as UN-employed guards at some UN headquarters or other office, but for the most part of persons specially and directly recruited by the UN for this assignment; these are therefore UN staff.

21. Charter Article 101, which deals with the employment and organization of UN staff, is not necessarily limited to civilians, though most likely only such type of staff was foreseen by the drafters of the Charter. See also *supra* note 20.

22. See *infra* note 42 and the related text.

23. These distinctions and terms were largely established by Secretary-General Boutros Boutros-Ghali's report on *An Agenda for Peace*, UN Doc. A/47/277-S/24111 (1992), paras. 20 *et seq.*, reproduced in AN AGENDA FOR PEACE 1995, UN Publication Sales No.E.95.I.15 (2nd edition, 1995), at 45 *et seq.*

24. Thus, for example, the UN Protection Force (UNPROFOR) in the former Yugoslavia, was initially established as a Chapter VI½ peace-keeping force, principally to demilitarize and protect the Serb-occupied areas of Croatia (thus creating the UN Protected Areas, or UNPAs); soon thereafter it was directed to demilitarize and operate the Sarajevo airport in Bosnia-Herzegovina and later also to escort humanitarian convoys (principally those of UNHCR) in Bosnia, to occupy the Prevlaka peninsula in Croatia opposite the FRY naval base of Kotor, and to deploy a small preventive force in Macedonia. Early in 1992, after Croatian attacks against an UNPA, the Security Council, in extending the period of the UNPROFOR mandate, did so under Chapter VII for the entire operation (though it later withdrew that designation from the preventive force in Macedonia); other resolutions mandating expansions in respect of Bosnia followed (such as the establishment of "safe areas"), and early in 1995 UNPROFOR was, at the demand of Croatia, divided into three separate operations for the three countries in which it had been functioning. See Chapter 24 of THE BLUE HELMETS, *supra* note 2.

25. See, however, the distinction as to Chapter VII operations referred to below.

26. It should be noted that in some of its judgements the International Criminal Tribunal for the former Yugoslavia (ICTY), after hearing months of testimony, was unable to come to a unanimous verdict as to whether various phases of the conflict in Bosnia and Herzegovina were civil or international. See *Prosecutor v. Duško Tadić a/k/a "Dule"* (ICTY case No. IT-94-1-A), Part. VI.B of the 7 May 1997 Judgment of the ICTY Trial Chamber dismissing those counts of the indictment that related to war crimes on the ground that the Bosnian conflict was not an international one, and the Dissent on that point by the Presiding Judge (later President) Gabrielle Kirk McDonald [36 ILM 908 (1997), respectively at 924 and at 970]; reversed by the 15 July 1999 Judgment of the Appeals Chamber [38 ILM 1518 (1999)], paras. 146–162).

27. This, in effect, is the criterion that had been specified by Article 2 of the Institute for International Law's Zagreb Resolution, quoted *infra*, text by note 42, and, more importantly, is the criterion now set out in para. 1.1 of the SGB, *supra* note 1.

28. 75 UNTS 287, 6 UST 3516, TIAS 3365, 50 AJIL 724 (1956).

29. See Legal Opinion issued by the UN Office of Legal Affairs to the Under-Secretary-General for Special Political Affairs on 15 June 1972, 1972 UN JURIDICAL YEARBOOK 153. That opinion cites the position taken by the United Nations at the second (1972) session of the ICRC-convened Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict (a survey of the Conference appears in UN Doc. A/8781, and para. 218 refers to this issue)—a precursor to the 1974–1977 Diplomatic Conference at which the two 1977 Protocols were negotiated.

30. See in particular the 1986 Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations, UN Doc. A/CONF.129/15 (not yet in force), which not only codifies the law concerning the participation of IGOs in international treaties but also foresees, in its final clauses, the participation of the United Nations and of certain other organizations in that Convention.

31. It might be pointed out that with the establishment of its two war crimes tribunals and the provisions therein for the imprisonment, in the custody of volunteer member States, of those convicted by these courts, the United Nations has recently in effect demonstrated that it has ways of overcoming some of these obstacles.

32. See *infra* text by notes 49, 55 and 56.

33. See, in particular, the discussions by Shrager, Meron and Condorelli in the Condorelli Colloque, *supra* note 5.

34. See Chapter 29 of THE BLUE HELMETS, *supra* note 2.

35. *Id.*, Chapter 11.

36. *Id.*, Chapter 14.

37. *Id.*, Chapter 25.B.

38. S/RES/1244 (1999) of 10 June 1999, especially paras. 9 and 10.

39. S/RES/1272 (1999) of 25 October 1999, para. 1.

40. Resolution adopted in Vienna in 1965 and reproduced in HANDBOOK OF THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT (13th ed., 1994) 748.

41. See Report of the Fifty-Second [ILA] Conference held at Helsinki (14–20 August 1966), Resolution IV (ii) on "International Medical Law: Application of the Geneva and certain other Conventions, etc.," at xiv–xv.

42. 54:II ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 449 (authentic French), 465 (English translation); 66 AJIL 465 (1972); with commentary, in DOCUMENTS ON THE LAWS OF WAR 371 (Eds. Adam Roberts & Richard Guelff, 1982) (a volume that contains the texts of almost all the IHL texts cited in this study; this text has, however, been omitted from the Third Edition (2000)).

43. See *infra* note 81, Article 2.2.

44. See the brief discussion of this point by Thiébaud Flory, in section III of his study of Charter Article 103 in *LA CHARTE DES NATIONS UNIES: COMMENTAIRE ARTICLE PAR ARTICLE 1387–1388* (Eds. Pierre Cot & Alain Pellet, 1985). This question is examined with special reference to IHL by Christian Dominice in the Condorelli Colloque (*supra* note 5) at 175, who concludes that even the Security Council could not overrule *jus cogens* principles of IHL.

45. Under Article 66(a) of the 1969 Vienna Convention on the Law of Treaties (1155 UNTS 331), such a determination should normally be made by the International Court of Justice; the Court has never yet had occasion to do so, with respect to IHL or any other provision of international law.

46. The question has, however, been raised in connection with economic sanctions imposed by the Security Council under Charter Article 41, especially in respect of Iraq. See this author's discussion of this question in *The Law of Economic Sanctions*, in *THE LAW OF ARMED CONFLICT: INTO THE NEXT MILLENNIUM*, 71 *International Law Studies* 473–474 (Eds. Michael Schmitt & Leslie Green, Naval War College, 1998). This point was also briefly mentioned by Dominice at the end of the study referred to in note 44 *supra*.

47. UN Doc. ST/SGB/UNEF/1 of 20 February 1957, Article 44.

48. UN Doc. ST/SGB/ONUC/1 of 15 July 1963, Article 43.

49. UN Doc. ST/SGB/UNFICYP/1 of 25 April 1964, Article 40, reproduced in 492 UNTS 57, at 148.

50. It should be noted that neither here, nor in any of the other regulations and agreements referred to in this section of the present study, does the UN explicitly refer to any of the 1907 Hague Conventions, such as Convention IV respecting the Laws and Customs of War on Land [205 CTS 227, 1 Bevens 631, TS 539, 2 AJIL 90 (1908)], even though the ICRC appears to consider that the 1949 Geneva Convention IV is merely supplementary to the earlier treaties; see both the Preface and the Foreword to *INDEX OF INTERNATIONAL HUMANITARIAN LAW* (Eds. Waldemar A. Solf & J. Ashley Roach, ICRC, 1987). On the other hand, as appears from Appendix II hereto, the Regulations annexed to Hague Convention IV appear to be sources for at least some of the provisions of the SGB, *supra* note 1.

51. The reference to the 1954 UNESCO Convention presumably responds to a resolution adopted by the 1954 Hague Intergovernmental Conference recommending that the UN ensure the application of the Convention by UN forces involved in military actions; see *DOCUMENTS ON THE LAWS OF WAR*, *supra* note 42, at 722 (Third Edition). Although no reference is made to the contemporaneously adopted [First] Protocol to the Convention, it might be considered as included in the UN's undertakings, as the citation to the UN TREATY SERIES is to the cover page that refers to the Final Act of the Hague Conference, as well as to both the Convention and the Protocol; evidently, no thought could then be given to the Second Protocol, adopted on 26 March 1999 [38 ILM 769 (1999)].

52. 555 UNTS 119, at 126, para. 11.

53. See *supra* note 1.

54. UN Doc. A/45/594 of 9 October 1990.

55. See, e.g., the Agreement between the United Nations and the Government of the Republic of Rwanda on the Status of the United Nations Assistance Mission for Rwanda (UNAMIR) of 5 November 1993 (1748 UNTS, Reg. No. I-30482), and the Agreement between the United Nations and the Government of the Republic of Croatia on the Status of the United Nations Confidence Restoration Operation in Croatia (UNCRO—the successor, in Croatia, of UNPROFOR) of 15 May 1995 (1864 UNTS, Reg. No. I-31771).



56. UN Doc. A/46/185 of 23 May 1991, para 28. It should be noted that in recent agreements the word "spirit" in the second and last lines of the quoted text has been replaced by "rules."

57. These agreements are to be distinguished from the Contribution Agreements between the United Nations and States Contributing Resources to United Nations Peace-keeping Operations—a model of which is set out in UN Doc. A/50/995 (1996), Annex—which are routinely concluded.

58. A/C.4/53/SR. 13, para. 21, and Press Release SG/SM/6777 - PKO/79 of 29 October 1998. The General Assembly's Special Committee on Peacekeeping Operations later complained that it had not been consulted as to this new policy (A/54/87 of 23 June 1999, para. 56).

59. S/RES/1261 (1999) of 25 August, 1999, para. 19. This requirement for training echoes the undertaking in Section 3 of the SGB (*supra* note 1) that the UN is to "ensure that members of the military personnel of [UN forces] are fully acquainted with the principles and rules of the [general conventions applicable to the conduct of military personnel]."

60. UN Doc. A/50/230 of 22 June 1995, para. 73.

61. Report by the ICRC on the first Meeting of Experts on the Applicability of International Humanitarian Law to United Nations Forces, Geneva, 6–8 March 1995 (July 1995).

62. 1868 St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 grammes Weight, 138 CTS 297 (Fr.); 1 AJIL Supplement 95 (1907), reprinted in DOCUMENTS ON THE LAWS OF WAR, *supra* note 42, at 53 (Third Edition).

63. Most recently the Committee did so in its report on its meetings during 1999, A/54/87 of 23 June 1999, para. 82.

64. See *supra* note 1.

65. See *infra* note 81.

66. See *supra*, text following note 55.

67. See *supra*, text by note 17.

68. UN CHARTER, Article 97.

69. See *supra* note 60.

70. See *supra* note 63. The lack of consultations was deplored by numerous delegations in the debate on peacekeeping operations in the Fourth Committee at the 54th session of the General Assembly during October 1999 (A/C.4/54/SR.10-13), though only the Canadian representative faulted the Bulletin substantively, as containing "an unacceptable level of imprecision and ambiguity" (*id.*, SR.11, para 2). It should be noted that the resolution that the General Assembly adopted consequent on this debate (A/RES/54/181 of 6 December 1999) does not refer to the Bulletin at all, thus neither criticizing the insufficient consultations nor endorsing the substance. The Special Committee is likely to add its own complaint on this score at its spring 2000 sessions—see *supra* note 58.

71. This would appear to follow from Article 98 of the UN Charter, and from the fact that, even if the Secretary-General's position as *de facto* Commander-in-Chief is not specified in the Charter, it follows from the circumstance that in establishing each military operation, the Council or the Assembly has specifically designated him as the one to implement it.

72. Introductory paragraph of the SGB, *supra* note 1.

73. Indeed, in a letter that the Secretary-General addressed to the President of the Security Council on 29 November 1992, in connection with a proposal to authorize an enforcement operation in Somalia to be undertaken by a group of member States, he suggested that one way by which the Council might exercise control over such a force would be to stipulate in the authorizing resolution that the "operation be conducted with full respect for the applicable rules of humanitarian law" (UN Doc. S/24868, at 5). However, the Council in authorizing the

operation [by Resolution 794 (1992) of 3 December 1992] did not include such a provision. See Chapter 14.B-C of THE BLUE HELMETS, *supra* note 2.

74. Article 20(a) of the Convention, *infra* note 81; see also Article 2.2 relating to the scope of coverage of the Convention.

75. See *infra* note 79.

76. UN Doc. CCW/CONF.I/16 (Part I), 35 ILM 1218 (1996).

77. See, e.g., Article 63 of Geneva Convention IV, *supra* note 28.

78. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) to the Inhumane Weapons Convention, *infra* note 79, 1342 UNTS 168, 19 ILM 1529 (1980).

79. Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1342 UNTS 137, 19 ILM 1523 (1980). It should be noted that the denunciation clause of the Convention (Article 9.2) contains a provision preventing the denunciation of a protocol from taking effect while a UN force protected by that protocol is continuing to perform its functions in the denouncing State.

80. UN Doc. CCW/CONF.I/16 (Part I), 35 ILM 1206 (1996).

81. General Assembly Resolution 49/59 of 9 December 1994, Annex, UNTS Reg. No. I-35457, 34 ILM 482 (1995). The Convention entered into force on 15 January 1999.

82. UN Doc. A/CONF.183/9 (1998), 37 ILM 998 (1998); a version of the Statute including the numerous corrections that had been circulated by the depositary on a non-objection basis has been issued by the ICC Preparatory Commission as document PCNICC/1999/INF.3. The Statute is not yet in force.

83. *Id.*, respectively Articles 8.2(b)(iii) and 8.2(e)(iii).

84. See, e.g., Meron in the Condorelli Colloque (*supra* note 5) at 444.

85. UN Doc. S/25704 of 3 May 1993, Annex, 32 ILM 1163 (1993), approved by Security Council Resolution 827 (1993) of 25 May 1993, 32 ILM 1203 (1993).

86. Security Council Resolution 955 (1994) of 8 November 1994, Annex, 33 ILM 1600 (1994).

87. 1 UNTS 15, 21 UST 1418, TIAS 6900, Section 20 in respect of "officials" and Section 23 in respect of "experts on mission for the United Nations."

88. See Article 29 of the Statute of the Yugoslav Tribunal (ICTY) (*supra* note 85) and Article 28 of the Statute of the Rwanda Tribunal (ICTR) (*supra* note 86).

89. See respectively Articles 87.6 and 73 of the ICC Statute, *supra* note 82.



## **Secretary-General's Bulletin**

### **Observance by United Nations forces of international humanitarian law**

The Secretary-General, for the purpose of setting out fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control, promulgates the following:

#### **Section 1**

##### **Field of application**

1.1 The fundamental principles and rules of international humanitarian law set out in the present bulletin are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence.

1.2 The promulgation of this bulletin does not affect the protected status of members of peacekeeping operations under the 1994 Convention on the Safety of United Nations and Associated Personnel or their status as non-combatants, as long as they are entitled to the protection given to civilians under the international law of armed conflict.

#### **Section 2**

##### **Application of national law**

The present provisions do not constitute an exhaustive list of principles and rules of international humanitarian law binding upon military personnel, and do not prejudice the application thereof, nor do they replace the national laws by which military personnel remain bound throughout the operation.

#### **Section 3**

##### **Status-of-forces agreement**

In the status-of-forces agreement concluded between the United Nations and a State in whose territory a United Nations force is deployed, the United

Nations undertakes to ensure that the force shall conduct its operations with full respect for the principles and rules of the general conventions applicable to the conduct of military personnel. The United Nations also undertakes to ensure that members of the military personnel of the force are fully acquainted with the principles and rules of those international instruments. The obligation to respect the said principles and rules is applicable to United Nations forces even in the absence of a status-of-forces agreement.

#### **Section 4**

##### **Violations of international humanitarian law**

In case of violations of international humanitarian law, members of the military personnel of a United Nations force are subject to prosecution in their national courts.

#### **Section 5**

##### **Protection of the civilian population**

5.1 The United Nations force shall make a clear distinction at all times between civilians and combatants and between civilian objects and military objectives. Military operations shall be directed only against combatants and military objectives. Attacks on civilians or civilian objects are prohibited.

5.2 Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

5.3 The United Nations force shall take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians or damage to civilian property.

5.4 In its area of operation, the United Nations force shall avoid, to the extent feasible, locating military objectives within or near densely populated areas, and take all necessary precautions to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations. Military installations and equipment of

peacekeeping operations, as such, shall not be considered military objectives.

5.5 The United Nations force is prohibited from launching operations of a nature likely to strike military objectives and civilians in an indiscriminate manner, as well as operations that may be expected to cause incidental loss of life among the civilian population or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.

5.6 The United Nations force shall not engage in reprisals against civilians or civilian objects.

## Section 6

### Means and methods of combat

6.1 The right of the United Nations force to choose methods and means of combat is not unlimited.

6.2 The United Nations force shall respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of international humanitarian law. These include, in particular, the prohibition on the use of asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode, expand or flatten easily in the human body; and certain explosive projectiles. The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons, is prohibited.

6.3 The United Nations force is prohibited from employing methods of warfare which may cause superfluous injury or unnecessary suffering, or which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment.

6.4 The United Nations force is prohibited from using weapons or methods of combat of a nature to cause unnecessary suffering.

6.5 It is forbidden to order that there shall be no survivors

6.6 The United Nations force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, places of worship and museums and libraries which constitute the cultural or spiritual heritage of peoples. In its area of operation, the United Nations force shall not use such cultural property or their immediate surroundings for purposes which might expose them to destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited.

6.7 The United Nations force is prohibited from attacking, destroying, removing or rendering useless

objects indispensable to the survival of the civilian population, such as foodstuff, crops, livestock and drinking-water installations and supplies.

6.8 The United Nations force shall not make installations containing dangerous forces, namely dams, dikes and nuclear electrical generating stations, the object of military operations if such operations may cause the release of dangerous forces and consequent severe losses among the civilian population.

6.9 The United Nations force shall not engage in reprisals against objects and installations protected under this section.

## Section 7

### Treatment of civilians and persons *hors de combat*

7.1 Persons not, or no longer, taking part in military operations, including civilians, members of armed forces who have laid down their weapons and persons placed *hors de combat* by reason of sickness, wounds or detention, shall, in all circumstances, be treated humanely and without any adverse distinction based on race, sex, religious convictions or any other ground. They shall be accorded full respect for their person, honour and religious and other convictions.

7.2 The following acts against any of the persons mentioned in section 7.1 are prohibited at any time and in any place: violence to life or physical integrity; murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; reprisals; the taking of hostages; rape; enforced prostitution; any form of sexual assault and humiliation and degrading treatment; enslavement; and pillage.

7.3 Women shall be especially protected against any attack, in particular against rape, enforced prostitution or any other form of indecent assault.

7.4 Children shall be the object of special respect and shall be protected against any form of indecent assault.

## Section 8

### Treatment of detained persons

The United Nations force shall treat with humanity and respect for their dignity detained members of the armed forces and other persons who no longer take part in military operations by reason of detention. Without prejudice to their legal status, they shall be treated in accordance with the relevant provisions of the Third Geneva Convention of 1949, as may be applicable to them *mutatis mutandis*. In particular:

(a) Their capture and detention shall be notified without delay to the party on which they depend and to the Central Tracing Agency of the International Committee of the Red Cross (ICRC), in particular in order to inform their families;

(b) They shall be held in secure and safe premises which provide all possible safeguards of hygiene and health, and shall not be detained in areas exposed to the dangers of the combat zone;

(c) They shall be entitled to receive food and clothing, hygiene and medical attention;

(d) They shall under no circumstances be subjected to any form of torture or ill-treatment;

(e) Women whose liberty has been restricted shall be held in quarters separated from men's quarters, and shall be under the immediate supervision of women;

(f) In cases where children who have not attained the age of sixteen years take a direct part in hostilities and are arrested, detained or interned by the United Nations force, they shall continue to benefit from special protection. In particular, they shall be held in quarters separate from the quarters of adults, except when accommodated with their families;

(g) ICRC's right to visit prisoners and detained persons shall be respected and guaranteed.

#### **Section 9**

##### **Protection of the wounded, the sick, and medical and relief personnel**

9.1 Members of the armed forces and other persons in the power of the United Nations force who are wounded or sick shall be respected and protected in all circumstances. They shall be treated humanely and receive the medical care and attention required by their condition, without adverse distinction. Only urgent medical reasons will authorize priority in the order of treatment to be administered.

9.2 Whenever circumstances permit, a suspension of fire shall be arranged, or other local arrangements made, to permit the search for and identification of the wounded, the sick and the dead left on the battlefield and allow for their collection, removal, exchange and transport.

9.3 The United Nations force shall not attack medical establishments or mobile medical units.

These shall at all times be respected and protected, unless they are used, outside their humanitarian functions, to attack or otherwise commit harmful acts against the United Nations force.

9.4 The United Nations force shall in all circumstances respect and protect medical personnel exclusively engaged in the search for, transport or treatment of the wounded or sick, as well as religious personnel.

9.5 The United Nations force shall respect and protect transports of wounded and sick or medical equipment in the same way as mobile medical units.

9.6 The United Nations force shall not engage in reprisals against the wounded, the sick or the personnel, establishments and equipment protected under this section.

9.7 The United Nations force shall in all circumstances respect the Red Cross and Red Crescent emblems. These emblems may not be employed except to indicate or to protect medical units and medical establishments, personnel and material. Any misuse of the Red Cross or Red Crescent emblems is prohibited.

9.8 The United Nations force shall respect the right of the families to know about the fate of their sick, wounded and deceased relatives. To this end, the force shall facilitate the work of the ICRC Central Tracing Agency.

9.9 The United Nations force shall facilitate the work of relief operations which are humanitarian and impartial in character and conducted without any adverse distinction, and shall respect personnel, vehicles and premises involved in such operations.

#### **Section 10**

##### **Entry into force**

The present bulletin shall enter into force on 12 August 1999.

(Signed) Kofi A. Annan  
Secretary-General

## **Appendix II**

### SOURCES OF THE PROVISIONS OF THE SECRETARY-GENERAL'S BULLETIN IN IHL CONVENTIONS

#### **Bulletin Paragraph IHL Convention Provisions**

5.1	P-I: A 48, (51)
5.2	P-I: A 51.3
5.3	P-I: A 57.2 (a) (ii)
5.4	P-I: A 58(b), (c)
5.5	P-I: A 51.4 (end), .5(b), 57.2 (iii)
5.6	P-I: A 51.6, 52.1
6.1	P-I: A 35.1; (H-IVR: A 22)
6.2	(1868 St. Petersburg. Decl.; 1899 Hague Decls. 2, 3; 1925 Geneva Protocol; Inhumane Weapons Conv., Protocols I-III; Chemical Weapons Conv.; Oslo/Ottawa Landmines Conv.)
6.3	P-I: A 35.2, 3 (55)
6.4	P-I: A 35.2; (1968 St. Petersburg. Decl.; H-IVR: A 23 (e))
6.5	P-I: A 40; P-II: A 4.1 (H-IVR: A 23 (d))
6.6	(H-IVR: A 27; H-IX A. 5; 1954 Hague Conv. Cult. Prop. P-I: A 53 (a); P-II: A 16)
6.7	P-I: A 54.2
6.8	P-I: A 56.1
6.9	P-I: A 53 (c), 54.4, 56.4
7.1	G-I/IV: A 3(1); P-I: A 75.1; (P-II: A 4.1)
7.2	G-I/IV: A 3(1); P-I: A 75.2; (P-II: A 4.2)
7.3	P-I: A 76.1; G-IV: A 27
7.4	P-I: A 77.1
8 (a)	(G-III: A 69, 70)
8 (b)	(G-III: A 22, 19)

8 (c)	(G-III: A 26-30)
8 (d)	(G-III: A 13, 17 (4), 87(3); ICCPR: A 7; Torture Conv.: A 2)
8 (e)	(G-III: A 25 (4), 108 (2); G-IV: 76(4), 85(4), 124(3))
8 (f)	(G-IV: A 76 (5); P-I: A 77.3-4)
8 (g)	(G-III: A 126(4))
9.1	G-I: A 12 (1)-(3)
9.2	G-I: A 15 (3)
9.3	G-I: A 19 (1); P-I: A 12.1
9.4	G-I: A 24
9.5	G-I: A 35
9.6	G-I: A 46
9.7	P-I: A 38.1
9.8	P-I: A 32, 33.3 (G-I: A 16(3); G-III: A 122 (2); G-IV: A 140 (2))
9.9	(P-I: A 81.1-4)

### Notations

A	Article
G-I/IV	1949 Geneva Conventions I, II, III or IV.
H-IVR	Regulations annexed to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land
H-IX	1907 Hague Convention IX Concerning Naval Bombardment in Time of War
ICCPR	International Covenant on Civil and Political Rights
P-I/II	1977 Protocol I or II to the 1949 Geneva Conventions

Items in the second column of the table that are not enclosed in parentheses are ones that are fully or in part paraphrased in at least part of the indicated paragraph of the Bulletin; items enclosed within parentheses are not directly paraphrased, and may have merely been sources of inspiration of the indicated paragraph of the Bulletin.

The texts of the IHL instruments referred to in the above table can be found, *inter alia*, in DOCUMENTS ON THE LAWS OF WAR, *supra* note 42.